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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,432	06/26/2001	Linlee Blake Nelson	P0113	5171
7590	05/14/2004		EXAMINER	
Burkhart & Burkhart Patent Attorneys 940 Dakota Avenue Whitefish, MT 59937			CRONIN, STEPHEN K	
			ART UNIT	PAPER NUMBER
			3727	11

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/894,432	NELSON, LINLEE BLAKE
	Examiner	Art Unit
	Stephen K. Cronin	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1–6, 8, 10-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salley 1,727,485 in view of Wilson 3,181,751.

Salley teaches an auto pocket article carrier comprising a planar mounting surface 8, a back panel 2, a front panel forming a plurality of storage compartments 3 and a securing mechanism 7, 22. See also the specification at lines 40-58. Salley however does not teach that the pockets may be formed with an increasing cross-sectional area from their bottoms to their tops. Wilson teaches a similar carrier formed from a back panel and a front panel which forms a plurality of pockets in which the pockets are sewn onto the back panel in a manner in which the cross-sectional area of the pockets increases from

their bottoms to their tops. See figure 2. Wilson also teaches that pockets sewn to a rear panel may also form more than one row. To form the pockets of Salley in the manner as taught by Wilson to obtain a plurality of rows of pockets with increasing cross-sectional areas would have been obvious to one of ordinary skill in the art to obtain the benefits inherent in the design of Wilson since both inventions teach alternative ways in which pockets may be sewn onto a rear panel.

4. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salley 1,727,485 in view of Wilson 3,181,751 as applied to claims 1-6, 8, 10-16 and 18-20 above, and further in view of Harnish 5,345,633.

To use an alternative equivalent means for attaching a carrier to a mounting surface such as the hook and loop fasteners taught by Harnish in place of the fastening system taught by Salley would have been an obvious substitution of equivalent means for fastening.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salley 1,727,485 in view of Wilson 3,181,751 as applied to claims 1-6, 8, 10-16 and 18-20 above, and further in view of Cirigliano 5,653,337.

To vary the height of the pockets of Salley in the manner as taught by Cirigliano to allow the storage and easier retrieval of different size objects would have been obvious to one of ordinary skill in the art.

#### ***Response to Arguments***

6. Applicant's arguments filed October 31, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that "A person of ordinary skill in the art would never be motivated to modify the framed carrier of Salley with the fishing tackle bag of Wilson, the carpenters tote of Cirigliano, and the headrest of Harnish" in order to arrive at applicants claimed invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The prior art of Salley teaches the basic structure, concept, function and intended use of applicants claimed invention. The prior art of Wilson, Cirigliano and Harnish were relied upon for a clear teaching that the structural features claimed by applicant that differ from the structure of Salley is old and well known in the art and are obvious variations to the structure of Salley.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen K. Cronin whose telephone number is 703-308-4296. The examiner can normally be reached on M-TH 7:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen K. Cronin

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Primary Examiner  
Art Unit 3727

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